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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,886	04/05/2001	Rinko Katsuda	AA352F	7733

27752 7590 08/25/2004

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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/806,886	Applicant(s) KATSUDA ET AL. 9	
	Examiner Lorna M. Douyon	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. This action is responsive to the amendment filed on June 3, 2004.
2. Claims 2-5, 8 and 12 have been canceled. Claims 1, 6-7, 9-11 are pending.
3. Claims 1, 6, 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Steventon et al. (WO 97/17939), hereinafter "Steventon", in view of Powell et al. (US Patent No. 5,804,544), hereinafter "Powell", in further view of Baginski et al. (US Patent No. 4,652,392), hereinafter "Baginski" for the reasons set forth in the previous office action.
4. Claims 1, 6-7, 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Akay et al. (WO 93/01269) in view of Powell in further view of Baginski for the reasons set forth in the previous office action.
5. Claims 6-7 and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are indefinite because each one of them depends from canceled claim 2.

Response to Arguments

6. Applicants' arguments filed June 3, 2004 have been fully considered but they are not persuasive.

With respect to the rejection based upon Steventon in view of Powell in further view of Baginski, Applicants argue that in light of the amendment to the claims, the combination of reference fails to teach either expressly or impliedly Applicants' claimed invention.

The Examiner respectfully disagrees with the above argument because the effervescence generator of Steventon, see page 10, lines 23-36, which include a combination of at least one alkali metal carbonate or bicarbonate in admixture with at least one organic acid such as tartaric, fumaric and citric acid, should also produce gas bubbles with a particle size as those recited upon contact with water because similar, if not the same, effervescent granules have been utilized. It should have been obvious to reasonably expect the alkali carbonate or bicarbonate to have an amorphous structure because said components are present in their amorphous structure prior to their admixture with the other ingredients of the composition.

With respect to the rejection based upon Akay in view of Powell in further view of Baginski, Applicants argue that in light of the amendment to the claims, the combination of reference fails to teach either expressly or impliedly Applicants' claimed invention.

The Examiner respectfully disagrees with the above argument because the coating of citric acid and sodium carbonate as in Example 6C under Table 5 on page 32 of Powell would have resulted in an effervescent granule which would also produce gas bubbles with a particle size as those recited upon contact with water because similar, if not the same, components have been utilized.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

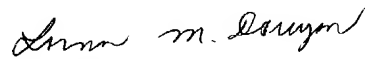
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lorna M. Douyon
Primary Examiner
Art Unit 1751